In the Supreme Court of the United States

IN THE MATTER OF THE APPLICATION OF JAMES LINCOLN FOR A WRIT OF HABEAS CORPUS.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

MOTION.

Comes now James Lincoln, petitioner in an application to this Court for a Writ of Habeas Corpus and files this, his motion, asking leave of the Court to file his said petition and application for a Writ of Habeas Corpus for the following reasons, to-wit:

That your petitioner shows to this Court that the Honorable Judge of the District Court in and for the District of Nebraska, presided at the trial of your petitioner and thereafter rendered judgment upon the verdict returned against him and overruled the motion for a new trial and a motion in arrest of judgment filed by your petitioner and found adversely to all the claims presented by your petitioner relating to the jurisdiction of the said Court, and that the Honorable Judge of said Court requested that the relief sought by your petitioner be made in the form of an original application to this Court.

That the judgment of said Court and the imprisonment

thereunder of your petitioner is illegal and void, for the reason that the application of the law to your petitioner under the circumstances as presented in the indictment found against him is unconstitutional and void, and that the United States District Court for the District of Nebraska was without jurisdiction of the offense charged against your petitioner.

That the United States Circuit Court of Appeals for the Eighth Circuit has passed adversely upon a similar application as this of your petitioner in the case of *In Re Boyd*, reported in the 49th Fed. Rep., Page 48.

That for the reasons stated, an application to this Court is necessary to relieve your petitioner of his unjust and illegal confinement under a void judgment of the District Court of the United States for the District of Nebraska.

By .....

.....

.....

IN THE SUPREME COURT OF THE UNITED STATES.

IN THE MATTER OF THE APPLICATION OF JAMES LINCOLN FOR A WRIT OF HABEAS CORPUS.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioner comes now and shows to this Honorable Court that he is a citizen of the United States and a resident of the State and District of Nebraska; that he is unjustly and

unlawfully held, detained and imprisoned in the County Jail of Douglas County, Nebraska, at and in the city of Omaha, by one George Stryker, jailor of said jail, on, under and by virtue of a warrant of commitment from the District Court of the United States, in and for the District of Nebraska, a copy of said commitment is hereby attached hereto and made a part hereof, and is marked Exhibit "A."

Your petitioner further shows that at the November, A. D. 1905 term of United States District Court in and for the District of Nebraska, the grand jurors of the United States and of the United States Court within and for the said District of Nebraska, having been empaneled, sworn and charged to inquire into and of offenses against the laws of the United States, committed in the District of Nebraska, found and returned an indictment against your petitioner, James Lincoln, charging him with introducing liquor into the Indian country, to-wit, the Winnebago Reservation in Thurston County, Nebraska, in violation of the laws of the United States, and which said indictment was found under the Act of Congress of January 30th, A. D. 1897, (29th Stat. at Large, P. 506), a copy of which said indictment is hereby and hereto attached and made a part hereof and is marked Exhibit "B."

Your petitioner further shows that he, on the 14th day of February, A. D. 1906, entered a plea of "not guilty" to said indictment and the charge therein set forth before the said United States District Court of the said District of Nebraska, and that he, your petitioner, was on the said 14th day of February, 1906, put upon trial and tried before and to a jury in the said United States District Court for the said District of Nebraska, the Hon. William H. Munger, Judge of said Court

in said District presiding, and said jury returned against your petitioner a verdict of "guilty;" that thereafter a motion was filed and caused to be filed by your petitioner, with the Clerk of said Court in the said District for a new trial, that said motion came on for hearing before said Court for said District, and that said motion was in said Court overruled: That thereupon your petitioner filed and caused to be filed with the Clerk of said Court for said District, a motion in arrest of judgment, that said motion in arrest of judgment so filed came on for hearing before the said judge of the said Court in said District, and that said motion was by said Court overruled: That then and thereupon the said United States Court for said District of Nebraska entered judgment upon the verdict of "guilty" and pronounced sentence upon and against your petitioner: That the judgment and sentence of the Court was and is that your petitioner be imprisoned in the jail of Douglas County, at and in the City of Omaha, Douglas County, Nebraska, for a period of sixty days, and that he, your petitioner, pay a fine of $100, and that he, your petitioner, stand committed until the fine and costs are paid: That said sentence pronounced by said Court against your petitioner began on and upon the 19th day of February, 1906, and your petitioner is now unjustly and unlawfully detained in the custody of George Strycker at, in and within the Douglas County jail in and for Douglas County, Nebraska.

Your petitioner further shows that his detention and imprisonment is unjust, is illegal and is void in this, to-wit:

First. That the enabling act of the Congress of the United States admitting the Territory of Nebraska as a State, did not except from its jurisdiction any part of the country known as the Winnebago Reservation, in Thurston County,

Nebraska; that said enabling act was passed April 19, 1864, and is found in 13th United States Statutes at Large, Page 47.

Second. That said Winnebago Reservation in Thurston County, Nebraska, is a part of the organized territory of the State of Nebraska, the same having been organized under an act entitled, "An Act defining the boundaries of Thurston County, Nebraska." Laws of 1889, Chapter 3, and found on Page 603 of the Compiled Statutes of Nebraska, 1905, and to which, for greater certainty, your petitioner begs leave here to refer. That all the Winnebago Indians and formerly members of the Winnebago tribe of Indians, including your petitioner, are allottees of land under the provisions of the Act of Congress of February 8, 1887, 24 United States Statutes at Large, Page 388, and they are citizens and residents of the said Thurston County and said State of Nebraska; that they participate in the local government by exercising the right of electoral franchise in all respects as any and all other residents and citizens in and ot said County and said State; that Winnebago Indians have been and are elected to, qualified and have held and hold the offices of County Commissioners, Justices of the Peace, Constables, Road Overseers, Assessors, Judges of Elections and Public School Directors.

Third. That the State of Nebraska exercises police power and supervision over the Territory of and known as the Winnebago Reservation, in Thurston County, Nebraska, and in all places within the boundaries of the said Winnebago Reservation in said Thurston County, Nebraska; that the State of Nebraska exercises police power and supervision over all Territory and places within the boundaries of the State of Nebraska and District of Nebraska except such territory and places over which the said State of Nebraska has relin-

quished jurisdiction to the United States; that the State of Nebraska has provided by law, duly enacted by the Legislature of said State of Nebraska against the sale of liquors to Indians, and for the control of and to regulate the liquor traffic within the limits of the said State of Nebraska except where the said State of Nebraska has granted the jurisdiction of special tracts, pieces or parcels of land to the United States; that the law governing and regulating the sale of liquors in the State of Nebraska is, "An Act to regulate the license and sale of malt, spirituous and vinous liquors and to repeal chapter 52 of the Code of Criminal Proceedure of the General Statutes of 1873, entitled 'License and Sale of Liquors,'" and to repeal an act entitled, "An Act to amend section 575 of chapter 58 of the Criminal Code," approved February 8, 1875, and to repeal an act to regulate the issuing of licenses for the sale of malt, spirituous and vinous liquors in the State of Nebraska, approved February 25, 1875; that said law took effect July 1st, A. D. 1881, and was and is for the entire control of and over the purchase, sale and use of malt, spirituous and vinous liquors in and within the State of Nebraska, and said law can be found at and upon Page 1041 of the Compiled Statutes of the State of Nebraska, 1905; that said Act is a full and complete regulation of the liquor traffic in and within the State of Nebraska, and it is intended to and does cover all the territory within the boundaries of the said State of Nebraska except such tracts, pieces or parcels of land specially relinquished to the United States; that no part, piece, parcel or tract of land in and within the said Winnebago Reservation of and in Thurston County, Nebraska, has ever been excepted or relinquished by the said State of Nebraska to the United States.

regulating the liquor traffic in so far as it applies to the Winnebago Reservation in the State of Nebraska, was enacted long after the Enabling Act by which Nebraska became a state on an equal footing with the other states of the United States and long after the Winnebago Indians became and were citizens of the State of Nebraska and the United States, and long after your petitioner became and was a citizen and resident of the State of Nebraska and the United States, and long after Thurston County, Nebraska, including the Winnebago Reservation, was duly organized.

Fifth. That the United States has no police power or jurisdiction over the country known as the Winnebago Reservation in the State of Nebraska, and that the law under which the indictment was drawn against your petitioner and under which your petitioner was found guilty, and under which your petitioner is imprisoned and deprived of his liberty, is unconstitutional and void in so far as it applies to the said Winnebago Reservation in Thurston County, Nebraska, and the United States District Court in and for the District of Nebraska is wholly without jurisdiction in the premises.

Sixth. That the law prohibiting the introduction of malt, spirituous and vinous liquors into the Indian country was and is incident to the main intention and purpose of preventing the sale of malt, spirituous and vinous liquors to the Indians who were and are wards of the United States government; that your petitioner shows to the Court that there are no such wards of the United States government on the Winnebago Indian Reservation in Thurston County, Nebraska.

Your petitioner further shows that his detention and imprisonment as herein set forth is illegal, in this, to-wit:

A. The sentence under which your petitioner is held is unjust, illegal and void.

B. The commitment under which your petitioner is held is unjust, illegal and void.

(*Fourth.* That said act of Congress of January 30, 1897,) Page 7

C. The Court was without jurisdiction to impose the particular sentence under which your petitioner is now held at and confined in the county jail of Douglas County, Nebraska.

D. The Court was without jurisdiction or power to sentence your petitioner to imprisonment in the county jail of Douglas County, Nebraska, for the offense charged against your petitioner and of which your petitioner was convicted.

E. Your petitioner's imprisonment and detention in the county jail of Douglas County, Nebraska, under said sentence as imposed by the United States District Court of the District of Nebraska, is contrary and in violation of the statutes and the laws of the United States.

F. There was no judgment and there is no judgment of the Court upon which to pass sentence on and upon your petiwhich to pass sentence on and upon your petitioner or to base tioner or to base the commitment under which your petitioner is held at and in the county jail of Douglas County, Nebraska.

G. The United States District Court of the District of Nebraska, which said Court passed sentence on and upon your petitioner, was without jurisdiction of the offense charged in the indictment upon which your petitioner was put upon trial and of which he was found guilty, and the sole and exclusive jurisdiction of the offense charged in the indictment

was and is in the District Court of Thurston County, Nebraska, and not in the United States Court of the District of Nebraska.

Wherefore to be relieved of the said unlawful detention and unjust, illegal and unlawful imprisonment your petitioner prays that a Writ of Habeas Corpus, to be directed to the said George Stryker, jailer of, for, in and at the county jail of Douglas County, Nebraska, may issue in this behalf, so that your petitioner may be forthwith brought before this Honorable Court to submit to and to receive what the law may direct.

.....

By

.....

.....

Counsel for the Petitioner.

State of Nebraska, Douglas County, ss:

I, James Lincoln, being first duly sworn upon oath depose and say that I am the petitioner named in the foregoing petition, subscribed by me, that I have read the said petition, that I know the contents thereof, that the facts therein set forth and the allegations therein made are true.

Subscribed in my presence, sworn to by me on this ..... day of March, A. D. 1906.

.....

Notary Public, Douglas County, Nebraska.

Commission expires .....

PLEAS, Before the HON. WILLIAM H. MUNGER, Judge of the District Court of the United States for the District of Nebraska, within the Eighth Judicial Circuit, at the November Term, 1905, of the District Court of the United States, for the District of Nebraska.

BE IT REMEMBERED, That at the said November Term, 1905, on the 15th day of November, 1905, the following proceedings were had in said Court, as appear of record in Journal "U," page ..., of said Court, to-wit:

UNITED STATES OF AMERICA,

569 N *VS.*

JAMES LINCOLN AND BRUCE BLACKDEER.

PRESENTMENT OF INDICTMENT.

On this day the Grand Jury came into Court, having been heretofore, to-wit: On the 31st day of October A. D. 1905, duly drawn according to law and duly empaneled and sworn on the 14th day of November, A. D. 1905, to well and truly try and true presentment make of all matters coming under their notice, and by their foreman, Joseph Crow, presented to the Court a True Bill of Indictment against said defendants, James Lincoln and Bruce Blackdeer, charging them, said defendants, with introducing intoxicating liquor on an Indian Reservation as specifically set forth in said indictment, contrary to the laws of the United States.

Whereupon, on motion of Irving F. Baxter, United States attorney for the District of Nebraska, it is *Ordered*, by the Court, that said Bill of Indictment be received and that

the Clerk endorse thereon, "Presented in open Court by the Grand Jury, and filed November 15, 1905."

Thereupon afterwards, to-wit: On the said 15th day of November, 1905, the indictment was filed in said case, which said indictment is in words and figures following, to-wit:

EXHIBIT "B."

In the District Court of the United States within and for the District of Nebraska, in the Eighth Judicial Circuit,

United States of America,
District of Nebraska.
ss:

in the term beginning the 13th day of November, in the year of our Lord, one thousand nine hundred and five.

The grand jurors of the United States of America, duly impanelled, sworn and charged to inquire within and for the said District of Nebraska, upon their oaths do present that James Lincoln and Bruce Blackdeer, late of the District of Nebraska, in the County of Thurston, in said District, heretofore, to-wit, on the 26th day of August, in the year of our Lord, one thousand nine hundred and five, at the Winnebago Indian Reservation, in the County of Thurston, in the State of Nebraska, Circuit and District aforesaid, and within the jurisdiction of this Court then and there being, did then and there wrongfully and unlawfully introduce into Indian country, to-wit, into and upon the Winnebago Indian Reservation, a reservation set apart for the exclusive use and benefit of certain tribes of the Winnebago Indians, certain spirituous, vinous, malt and other intoxicating liquors, to-wit: One pint of whiskey, one pint of brandy, one pint of gin, one pint of

beer, one pint of ale, and five pints of other spirituous, malt, vinous, and intoxicating liquors of the value of one dollar each, contrary to the form, force and effect of the statute of the United States of America in such case made and provided, and against the peace and dignity of the said United States.

IRVING F. BAXTER,
United States Attorney.

Endorsements appear on said Indictment in words and figures following, to-wit:

Presented in open Court by the Grand Jury and filed November 15, 1905. R. C. HOYT, *Clerk.*

No. 569, Doc. N. United States District Court.

United States v. James Lincoln, Bruce Blackdeer.

INDICT: Introducing liquor on reservation. 2nd Supp. 545

A True Bill: Joseph Crow, Foreman.

Irving F. Baxter, U. S. Attorney.

Filed Nov. 15, 1905, R. C. Hoyt, Clerk.

Thereupon afterwards, to-wit: At the said November Term, 1905, on the 14th day of February, 1906, the following proceedings were had in said case as appear of record in Journal "V," page .... of said Court, to-wit:

UNITED STATES OF AMERICA,
569 N *VS.*
JAMES LINCOLN.

ARRAIGNMENT
AND PLEA.

Now the defendant, James Lincoln, appears at the bar of the Court personally, and by his Attorneys, Hon. Thomas L.

Sloan and Hon. John W. Battin, and he is duly arraigned upon an indictment had, presented and filed herein against him, on the 15th day of November, 1905, charging him, said defendant, with introducing intoxicating liquor into and upon the Winnebago Indian Reservation, as specifically set forth in said indictment, contrary to the laws of the United States.

Thereupon said defendant, James Lincoln, enters a plea of "Not Guilty" to the offense as charged in said indictment.

Thereupon afterwards, to-wit: At the November Term, 1905, on the 15th day of February, 1906, the following proceedings were had in said case as appear of record in Journal "V," page ...., of said Court, to-wit:

UNITED STATES OF AMERICA,

569 N *VS.*

JAMES LINCOLN.

TRIAL.

Now comes the United States of America, by Hon. Charles A. Goss, attorney of the United States for the District of Nebraska, and the defendant, James Lincoln, personally and by his attorneys, Hon. Thomas L. Sloan and Hon. John W. Battin, and said defendant having been heretofore, to-wit, on the 14th day of February, 1906, duly arraigned upon an indictment had, presented and filed herein against him, charging him with introducing intoxicating liquor into and upon the Winnebago Indian Reservation, as set forth in said indictment, and having entered a plea of "Not guilty" to the offense charged in said indictment, and this cause now being moved for trial,

It is Ordered, by the Court, that a jury come, to-wit:

1. A. J. Hill,
2. Sam Reitz,
3. John P. Young,
4. John L. Denning,
5. R. M. Farr,
6. Jas. Calfee,
7. J. I. Beech,
8. F. B. Hunt,
9. Geo. Hemstedt,
10. J. W. Robbins,
11. W. D. Fisher,
12. Wm. Wurtz.

Twelve (12) good and lawful men who are duly empaneled and sworn to try said cause. The defendant and his attorneys being at all times present, the opening statements are made, the evidence is heard and concluded, and after hearing the arguments of the respective attorneys and the charge of the Court, the jury retired in charge of a bailiff, duly sworn, for deliberation.

UNITED STATES OF AMERICA,

569 N *VS.*

JAMES LINCOLN.

VERDICT.

The jury heretofore duly empaneled and sworn to try the above entitled cause, having heretofore retired to consider of their verdict in said case, now come into Court and by their foreman, in their presence present the following verdict, to-wit:

"In the District Court of the United States for the District of Nebraska.

THE UNITED STATES

VS.

JAMES LINCOLN.

No. 569. Doc. N.

VERDICT.

We, the jury duly empaneled and sworn to try the issues joined in the above entitled cause, do find the said defendant, James Lincoln, guilty in the manner and form as charged in the indictment therein.

W. A. Wurtz, *Foreman.*"

Endorsed: Filed Feb. 15, '06. R. C. Hoyt, *Clerk.*

Thereupon afterwards, on the 16th day of February, 1906, motion for a new trial and motion in arrest of judgment, was filed in said case, which said motions are in words and figures following, to-wit:

In the District Court of the United States for the District of Nebraska.

THE UNITED STATES OF AMERICA

VS.

JAMES LINCOLN.

MOTION FOR NEW TRIAL.

Comes now the defendant and moves the Court that the verdict heretofore rendered against him in this cause be va-

cated and a new trial awarded the defendant for the following reasons, to-wit:

1. That the verdict is contrary to law.

2. That the verdict is not sustained by sufficient evidence.

3. That this Court has no jurisdiction to try and determine said case, and that the defendant is not subject to prosecution under the charge presented in the indictment filed in this case.

4. For the reason that although the defendant is a Winnebago Indian, he is an allottee of land under the provisions of the Act of Congress of February 8th, 1887, and known as the General Allotment Act, and by which he is declared to be a citizen of the United States, and that he does not sustain any tribal relations to any tribal organization.

5. For the reason that the Winnebago Reservation is not Territory within and under the exclusive jurisdiction of the United States, and that the United States has no exclusive jurisdiction or police power over the said Winnebago Reservation in Thurston County, Nebraska.

6. That the said Winnebago Reservation in Thurston County, Nebraska, is within the sole and exclusive jurisdiction of the State of Nebraska for all police regulations and jurisdiction.

7. For the reason that the evidence shows that the liquor which it is alleged that the defendant introduced into the Indian Country, to-wit, the Winnebago Reservation in Thurston County, Nebraska, had been transported to him over a part of the reservation and out of the said Winnebago Reservation and upon land not a part of said Winnebago Res-

ervation when it was taken from him by the Superintendent of the Winnebago Agency School, and that the act of introducing liquor was not consumated. That there is provision for the punishment of the attempting to introduce liquor into the Indian Country.

8. For the reason that the Winnebago Reservation in Thurston County, Nebraska, is an organized part of the State of Nebraska over which County and State Government is maintained and enforced, and that the Indians of the former Winnebago tribe participate in said government by nominating and electing the officers of said government, many of whom are Winnebago Indians.

JAMES LINCOLN,
By THOMAS L. SLOAN AND
JOHN W. BATTIN,
His Attorneys.

ENDORSED: Filed Feb. 16, 1906.
R. C. HOYT, *Clerk.*

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEBRASKA.

THE UNITED STATES
OF AMERICA,
VS.
JAMES LINCOLN.

MOTION IN ARREST OF JUDGMENT.

Comes now the defendant and moves the Court to arrest judgment on the indictment herein on which the defendant was convicted because the facts therein stated do not consti-

tute an offense against the laws and statutes of the United States.

2. For the reason that the defendant is an allottee of land under the provisions of the Act of Congress of February 8, 1887, and that he is a citizen of the State of Nebraska and of the United States, and that the territory of the Winnebago Reservation, in Thurston County, Nebraska, is not within the sole jurisdiction of the United States. That the whole of said Winnebago Reservation in Thurston County, Nebraska, has been allotted, and that all the former members of the Winnebago tribe of Indians have been allotted as far as there was land in sufficient quantity to allot them. That many of the said allotments of deceased allottes, of the Winnebago tribe, have been sold, and that the title has passed wholly out of both the United States and the Indian, and although it is within the original limits of the Winnebago Reservation, in Thurston County, Nebraska, it is now no part of said reservation.

3. That the said Winnebago Reservation, in Thurston County, Nebraska, is not territory within the sole or exclusive jurisdiction of the United States.

4. That the United States has not police jurisdiction over said Winnebago Reservation in Thurston County, Nebraska.

5. That the State of Nebraska has the exclusive jurisdiction for police regulation over the Winnebago Reservation in Thurston County, Nebraska.

6. That all of the Winnebago Indians or their descendants are allottes of land under some provision of law or treaty, except such minor children who have been born since the land has been exhausted by allotment.

7. That the Winnebago Indians, allottes upon the Winnebago Reservation in Thurston County, Nebraska, are citizens of the state of Nebraska, maintaining a county and state government over their former reservation and participating in said government as electors, officers, and subject under the laws of the State of Nebraska.

8. That the State Courts and County Courts of Thurston County, Nebraska, exercise a criminal and police jurisdiction over all the inhabitants in Thurston County, Nebraska, including the Winnebago Reservation in said Thurston County, Nebraska, including the Winnebago Reservation in said Thurston County, Nebraska, and all Winnebago Indians residing thereon.

JAMES LINCOLN,
By THOMAS L. SLOAN AND
JOHN W. BATTIN,
His Attorneys.

ENDORSED: Filed Feb. 16, 1906. R. C. HOYT, *Clerk.*

Thereupon afterwards, to-wit: At the said November Term, 1905, on the 19th day of February, 1906, the following proceedings were had in said case as appear of record in Journal "V." page .... of said Court, to-wit:

UNITED STATES OF AMERICA.

569 N *VS.*

JAMES LINCOLN.

MOTION FOR NEW TRIAL OVERRULED.

This cause came on for hearing upon the Motion for a New Trial of the above entitled cause and was duly submitted to the Court, the Hon. Charles A. Goss appearing for the United

States of America, and the Hon. Thomas L. Sloan and John W. Battin for the defendant, James Lincoln. After due consideration thereof and being fully advised in the premises, it is by the Court—

Ordered, That the Motion for a New Trial be and the same is hereby overruled. To which ruling of the Court the defendant excepts.

UNITED STATES OF AMERICA,

569 N *VS.*

JAMES LINCOLN.

MOTION IN ARREST OF JUDGMENT OVERRULED.

This cause came on for hearing upon the Motion in Arrest of Judgment in the above entitled cause, and was duly submitted to the Court, the Hon. Charles A. Goss appearing for the United States of America, and the Hon. Thomas L. Sloan and Hon. John W. Battin for the defendant, James Lincoln. After due consideration thereof and being fully advised in the premises, it is by the Court—

Ordered, That the Motion in Arrest of Judgment be and the same is hereby overruled. To which ruling of the Court the defendant excepts.

UNITED STATES OF AMERICA,

569 N *VS.*

JAMES LINCOLN.

SENTENCE.

Now the defendant, James Lincoln, appears at the bar of the Court personally, and by his Attorneys, Hon. Thomas L. Sloan and Hon. John W. Battin, and he having been heretofore, to-wit: On the 15th day of February, 1906, convicted

(by a jury duly empaneled and sworn to try said cause,) of the crime of introducing intoxicating liquor into and upon the Winnebago Indian Reservation, as specifically set forth in the indictment filed therein. Now comes Hon. Charles A. Goss, Attorney of the United States for the District of Nebraska, and moves the Court that sentence and judgment be pronounced against said defendant upon the conviction of "Guilty," as rendered by the jury empaneled and sworn therein. And said defendant, being asked whether he has any legal reason why sentence and judgment should not be pronounced against him, and he being heard in that behalf, and no cause being shown, it is by the Court,

Considered, Ordered and Adjudged, That said defendant, James Lincoln, pay into this Court a fine of one hundred ($100.00) dollars and costs of prosecution, to be taxed, and that the United States have execution therefor, and be imprisoned in the common jail of Douglas County, situated at Omaha, Nebraska, for a term of sixty (60) days, and until said fine and costs are paid. The term of imprisonment to date from 12 o'clock, noon, this day.

Thereupon afterwards, to-wit: On the said 10th day of February, 1906, final commitment was duly issued in said case and returned and filed on said day, which said final commitment is in words and figures following, to-wit:

EXHIBIT "A."

Final Commitment. (Original.)

UNITED STATES OF AMERICA,

District of Nebraska.

The President of the United States of America.

To the Marshal of the United States for the District of

Nebraska, and to the Keeper of the Common Jail of Douglas County, Nebraska, Greeting:

Whereas, on the 15th day of February, A. D. 1906, at a term of the District Court of the United States for the District of Nebraska, held at Omaha, in said District, James Lincoln was convicted of the crime of introducing liquor on an Indian Reservation, contrary to the laws of the United States, and sentenced to be imprisoned in the Common Jail of Douglas County, Nebraska, situated at Omaha, for a period of sixty (60) days, beginning at noon on the 19th day of February, A. D. 1906, and further sentenced to pay a fine of $100.00 and costs of prosecution, taxed at $....., and stand committed in the said Common Jail of Douglas County aforesaid, until said fine, costs and accrued costs be paid.

Now, therefore, you, the said Marshal, are hereby commanded to deliver to the Keeper of the said Common Jail of Douglas County, Nebraska, the body of James Lincoln, who is now in your custody.

And you, the said Keeper of said Common Jail of Douglas County, Nebraska, are hereby commanded to receive the body of the said James Lincoln and safely keep him in said jail until said sentence shall have been fully complied with, or until he shall have been discharged therefrom by due course of law.

Witness, the Honorable William H. Munger Judge of the District Court of the United States (SEAL.) for the District of Nebraska, at Omaha, this 19th day of February, A. D. 1906.

R. C. HOYT, *Clerk*.

Endorsed on said Final Commitment is the Return of the Marshal, in words and figures following, to-wit:

RETURN.

Received this Commitment on the 19th day of February and on the same day I delivered the within named James Lincoln to the custody of the within named Jail Keeper, with whom I left at the same time a certified copy of this commitment.

Dated this 19th day of February, A. D. 1906.

WM. P. WARNER, *U. S. Marshal.*

By LOGAN SAMMONS, *Deputy.*

MARSHAL'S COSTS.

Service	$ .50
Mileage	...
Expense	...
Total	.50

Rec'd at Marshal's office, 2, 19, 1906.

Handed Deputy 2, 19, 1906.

ENDORSED:

Filed Feb. 19, 1906. R. C. HOYT, *Clerk.*

CERTIFICATE.

United States of America,
District of Nebraska.
ss:

I, R. C. Hoyt, Clerk of the District Court of the United States for the District of Nebraska, hereby certify that the foregoing is a true and correct transcript of the pleadings, process and proceedings of record and on file in said Court in case of the United States of America vs. James Lincoln, No.

569, Doc. N, as the same appear of record and on file in my said office, as such Clerk.

Witness my hand and the seal of said Court, at Omaha, in said District, this 19th day of February, 1906.

(SEAL.) R. C. HOYT, *Clerk.*

IN THE DISTRICT COURT OF THE UNITED STATES WITHIN AND FOR THE DISTRICT OF NEBRASKA.

UNITED STATES

VS.

JAMES LINCOLN.

STIPULATION.

It is hereby stipulated and agreed by and between the parties hereto, that the defendant is and was, on August 26th, 1905, an allottee of lands granted to him on the Winnebago Reservation in Thurston County, Nebraska, said allotment having been made to him under the provisions of the Act of Congress of February 8, 1887, and known as the General Allotment Act. That said allotment was made to him and the first patent therefor issued to him in December, 1893, and that the trust limitation has not yet expired, the title to said allotted land still being held in trust by the Government.

That said James Lincoln, defendant, was indicted for introducing liquor into the Indian country, to-wit, the Winnebago Reservation in Thurston County, Nebraska, said indictment being found under the provisions of the Act of Congress of January 30, 1897 (29 Statutes at Large, page 506). That on August 26, 1905, the defendant had procured, at a point

outside of the said Winnebago Reservation, certain whiskey which he was taking and did take within and upon said Reservation, with the intention of taking it to his home, which was upon another allotment than his own, but the title to which allotment was still held in trust by the Government, and it was his intention there to use and drink said whiskey.

That said Winnebago Reservation had been allotted practically in whole, and that many of the allotments of deceased Winnebago Indians have been sold under the provisions of the Act of Congress of May 27, 1902 (32 Stat. at Large, 245). That there are within the original boundary limits of the Winnebago Reservation, in Thurston County, Nebraska, lands that have been sold and deeded to white people and the title thereto has passed out of both the Indian and the United States Government.

That all of the Winnebago Indians who were born and living at the time of allotment in the year 1888 received allotments under the provisions of the Act of February 8, 1887, or of some previous act or treaty.

That the Winnebago Reservation is within an organized County of the State of Nebraska, known as Thurston County, and that the Winnebago Indians exercise all the rights of citizenship and take part in the County Government extending over the said Winnebago Reservation, some of them holding offices under the County government as County Commissioners, Justices of the Peace, Constables, Road Overseers, election officers and jurors in the County and District Courts of the State of Nebraska.

It is further stipulated that only a few of them have

taken out naturalization papers under any Act of Congress and that the defendant has not done so.

Dated February 16, 1906.

CHARLES A. GOSS,
United States Attorney.

THOMAS L. SLOAN,
Attorney for Defendant.

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Office Supreme Court U. S.
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JAMES H. McKENNEY,
Clerk.

In the Supreme Court of the United States.

OCTOBER TERM, 1905.

EX PARTE: IN THE MATTER OF JAMES LINCOLN, PETITIONER. NO. 21, ORIGINAL.

RETURN TO RULE.

Comes now the respondent and in answer to the rule to show cause issued herein says that petitioner is held by him in custody as keeper of the common jail of Douglas County, Nebr., by virtue of a commitment issued by the District Court of the United States for the District of Nebraska on February 19, 1906, a certified copy of which accompanied the petition and which also appears on pages 21 and 22 of the printed copies thereof.

GEORGE STRYKER,
Respondent.
By HENRY M. HOYT,
Solicitor-General.

APRIL 6, 1906.

25847—06

IN THE
Supreme Court of the United States

IN THE MATTER OF THE APPLICATION OF JAMES LINCOLN FOR A WRIT OF HABEAS CORPUS.

BRIEF OF PETITIONER.

STATEMENT OF FACTS.

It is admitted that James Lincoln, your petitioner, was convicted by the United States District Court for the District of Nebraska of introducing liquor in the Indian Country, to-wit: THE WINNEBAGO RESERVATION IN THURSTON COUNTY, NEBRASKA under the provisions of the Act of Congress of January 30, 1897, 29 Statutes at Large, page 506. It is further admitted that the said James Lincoln is an allottee of lands under the provisions of the Act of Congress of February 8th, 1887. See page 24 of Record.

It is further admitted that the Winnebago Reservation in Thurston County, Nebraska has been allotted practically in whole. That many of the allotments made to Indians now deceased have been sold, and that within the original boundry limits of the Reservation there is land owned and occupied by

white people over which the United States has no supervision.

It is further admitted that the said Winnebago Reservation is within an organized County of the State of Nebraska. That in the State and County Government extending over this Reservation the Winnebago Indians take an active part. That some of them hold office as County Commissioners, Justices of the Peace, Constables, Road Overseers, Election Officers, and Jurors in the County and District Courts. That all of them otherwise qualified exercise their right of franchise as electors.

ARGUEMENT.

It is claimed by your petitioner that the territory refered to as the WINNEBAGO RESERVATION IN THURSTON COUNTY, NEBRASKA is within the sole and exclusive police power and jurisdiction of the State of Nebraska. That the United States of America did not when the State of Nebraska was admitted into the Union reserve any police power or jurisdiction over the Territory in question, and that the State of Nebraska has not granted to the United States any such jurisdiction.

That the enabling act to the People of the Territory of Nebraska was passed on April 19, 1864 and is found in Volume 13 United States Statutes at Large page 47. This act was passed prior to the Treaty of March 8, 1865 by which the Reservation was created

for the Winnebago Indians and granted to them. The jurisdiction of the State of Nebraska over similar territory, in fact a part of the same territory the Omaha Reservation out of which the Winnebago Reservation was created has been considered by the Supreme Court of the State of Nebraska in the case of Painter vs. Ives, 4 Nebraska 128 where the court says :

"Now it is only within those particular places mentioned in the sixteenth subdivision of section eight, article one, of the federal constitution, that Congress can provide general police regulations for the government of the people. All other places are within the exclusive control of the state government, to whose legislation we must look for the punishment of all ordinary crimes and misdemeanors. From this it would seem clear that at the date of our admission into the Union, every portion of the territory within the prescribed boundries of the state, THE INDIAN RESERVATIONS INCLUDED, became subject to its laws, and that for the punishment of all ordinary crimes, such as that under consideration, resort could alone be had to state laws, administered by state courts."

The same conclusion was reached in the case of Ex parte Sloan in which the Court said :

"After a State has been admitted into the Union, the fact that within its boundries land, the fee of which is in the United States, is set apart for an Indian Reservation is not enough of itself to give the United States Court jurisdiction to try a person for murder committed within the limits of such reservation."
4 Sawyer, 330.

The effect given an enabling act as to the jurisdiction of the United States Courts over offenses committed on an Indian Reservation as it might be limited by a disclaimer of right to such lands is fully discussed in the case of Draper vs. United States, 164 U. S. 244 where the Court says :

"As equality of statehood is the rule, the words relied on here to create an exception cannot be construed as doing so, if, by any reasonable meaning, they can be otherwise treated. The mere res-

ervation of jurisdiction and control by the United States of 'Indian Lands' does not of necessity signify a retention of jurisdiction in the United States to punish all offenses on such lands by others than Indians or against Indians."

This case approves the decision of United States vs. McBranty 104 U. S. 622 from which the court uses the following statement:

"Whenever, upon the admission of a state into the Union Congress has intended to except out of it an Indian Reservation, it has done so by express words."

There is no exception in the enabling act admitting the State of Nebraska and the language is much broader than that of the Montana enabling act.

The Indians within the Winnebago Reservation of Thurston County, Nebraska being allottees they are therefore citizens, and no question can arise under that part of the Act of January 30, 1897 as to selling or giving to Indians. The question is wholly as to introducing into the Indian country. The question is wholly as to the police power or jurisdiction of the United States over the said Reservation. The question is materially answered by this court in the case of In re Heff wherein it is said:

"Now the act of 1897 is not a revenue statute, but plainly a police regulation. It will not be doubted that an act of Congress attempting as a police regulation to punish the sale of liquor by one citizen of a State to another within the territorial limits of that State would be an invasion of the State's jurisdiction and could be sustained, and it would be immaterial what the antecedent status of either buyer or seller was. There is in these police matters no such thing as a divided sovereignty. Jurisdiction is vested entirely in either the State or nation and not divided between the two."

In re Heff 197 U. S. 489.

The act then is a police regulation and there is no

divided sovereignty. This Court further cites and approves the case of the United States vs. Dewitt 9 Wall. 41 and quotes therefrom as follows :

> "As a police regulation, relating exclusively to the internal trade of the States, it can only have effect where the legislative authority of Congress excludes, territorially, all State legislation, as for example, in the District of Columbia. Within State limits, it can have no constitutional operation."

The Indian then who is a voter, citizen and wholly released from Federal wardship, and subject to only the laws of the State of which he is a resident and citizen should not be deprived of his liberty by laws that invade the State's jurisdiction. The County of Thurston within which the Reservation lies was organized in the year 1889, see Cobbey's Annotated Statutes page 1518. The Indians were allotted lands, and patents issued to them in 1893 and the Act under which petitioner was convicted was not passed until January 30, 1897. The enabling act, the allotments, and the organization of the County were all legal acts long prior to the act under which petitioner was prosecuted, and convicted. The said act of January 30, 1897 is subsequent to all these rights of the State, the County and the allottee.

The liquor traffic is under the control and regulation of State laws. The State of Nebraska has provided punishment for the violation of its liquor laws, and the Indian Citizen the same as other citizens, should be subject to only one sovereign jurisdiction and power.

The freedom to handle liquor is not necessary to

the Indian's success. But to be treated as a man under the laws of the Country is necessary.

Respectfully submitted,

WILLIAMSON S. SUMMERS

AND

THOMAS L. SLOAN,

Attorneys for Petitioner.

In the Supreme Court of the United States.

OCTOBER TERM, 1905.

IN RE JAMES LINCOLN, PETITIONER. No. 21, original.

APPLICATION FOR A WRIT OF HABEAS CORPUS.

BRIEF OF UNITED STATES FOR RESPONDENT.

STATEMENT.

The facts of this case are set forth in the stipulation accompanying the petition (pp. 24–26 of print), which states:

> It is hereby stipulated and agreed by and between the parties hereto, that the defendant is and was, on August 26, 1905, an allottee of lands granted to him on the Winnebago Reservation in Thurston County, Nebraska, said allotment having been made to him under the provisions of the act of Congress of February 8, 1887, and known as the General Allotment Act. That said allotment was made to him and the first patent therefor issued to him in December, 1893, and that the trust limitation has not yet expired, the title to said allotted land still being held in trust by the Government.

26963—06——1

That said James Lincoln, defendant, was indicted for introducing liquor into the Indian country, to wit, the Winnebago Reservation in Thurston County, Nebraska, said indictment being found under the provisions of the act of Congress of January 30, 1897 (29 Statutes at Large, page 506). That on August 26, 1905, the defendant had procured, at a point outside of the said Winnebago Reservation, certain whiskey which he was taking, and did take, within and upon said reservation, with the intention of taking it to his home, which was upon another allotment than his own, but the title to which allotment was still held in trust by the Government, and it was his intention there to use and drink said whiskey.

That said Winnebago Reservation had been allotted practically in whole, and that many of the allotments of deceased Winnebago Indians have been sold under the provisions of the act of Congress of May 27, 1902 (32 Stat. at Large, 245, 275). That there are within the original boundary limits of the Winnebago Reservation, in Thurston County, Nebraska, lands that have been sold and deeded to white people and the title thereto has passed out of both the Indian and the United States Government.

That all of the Winnebago Indians who were born and living at the time of allotment in the year 1888 received allotments under the provisions of the act of February 8, 1887, or of some previous act or treaty.

That the Winnebago Reservation is within an organized county of the State of Nebraska,

known as Thurston County, and that the Winnebago Indians exercise all the rights of citizenship and take part in the county government extending over the said Winnebago Reservation, some of them holding offices under the county government as county commissioners, justices of the peace, constables, road overseers, election officers, and jurors in the county and district courts of the State of Nebraska.

It is further stipulated that only a few of them have taken out naturalization papers under any act of Congress and that the defendant has not done so.

It does not appear from this stipulation upon what part of the reservation the liquor was actually introduced. I am advised, however, by the United States attorney, and I presume counsel for respondent will so admit, that Lincoln went upon and across trust allotments with the liquor in his possession, having been arrested on a road upon the reservation between lands sold to a white man and trust lands, after having traversed such allotments. The stipulation was intended to present a case as to the jurisdiction of the Federal Government over allotments still held in trust by the United States.

The act of January 30, 1897, under the provisions of which the indictment was found, provides (29 Stat., 506):

> That any person who shall sell, give away, dispose of, exchange, or barter any malt, spirituous, or vinous liquor, including beer, ale, and wine, or any ardent or other intoxicating liquor of any kind whatsoever, or any essence, ex-

tract, bitters, preparation, compound, composition, or any article whatsoever, under any name, label, or brand, which produces intoxication, to any Indian to whom allotment of land has been made while the title to the same shall be held in trust by the Government, or to any Indian a ward of the Government under charge of any Indian superintendent or agent, or any Indian, including mixed bloods, over whom the Government, through its departments, exercises guardianship, *and any person who shall introduce, or attempt to introduce, any malt, spirituous, or vinous liquor, including beer, ale, and wine, or any ardent or intoxicating liquor of any kind whatsoever into the Indian country, which term shall include any Indian allotment while the title to the same shall be held in trust by the Government,* or while the same shall remain inalienable by the allottee without the consent of the United States, shall be punished by imprisonment for not less than sixty days and by a fine of not less than one hundred dollars for the first offense and not less than two hundred dollars for each offense thereafter: *Provided, however,* That the person convicted shall be committed until fine and costs are paid.

Petitioner was convicted and sentenced to pay a fine of $100 and costs of prosecution, and to be imprisoned in the county jail for sixty days, and until said fine and costs were paid.

ARGUMENT.

I.

At the outset I desire to say that the Government in no way intends to controvert the decision of this court in the *Matter of Heff* (197 U. S., 488), that an Indian who has received an allotment and trust patent under the act of February 8, 1887, is a citizen of the United States and subject to the jurisdiction of the State in matters of police.

We base our claim for the jurisdiction of the United States in this case, not upon any supposed authority over the Indian, as such, but upon its jurisdiction over the lands in question.

We contend that the lands in the Winnebago Reservation, allotted and unallotted, so long as the title to the same remains in trust in the United States, may be protected by the Government against trespass and intrusion, and that it is within the competency of Congress, as it has done in the act of January 30, 1897, to make it an offense against the United States to introduce liquor therein.

The lands in question were originally a part of the Omaha Reservation, but were purchased from the Omahas by a treaty concluded March 6, 1865 (Revision of Indian Treaties, 1873, p. 569), and set apart for the use of the Winnebagos by a treaty concluded with the latter tribe March 8, 1865 (id., 1014).

The lands originally occupied by the Omahas, including those in question, were not excluded by any act or treaty from the jurisdiction of the State of Nebraska; consequently upon its admission they became a part of the territory of the State and embraced within its jurisdiction.

Langford v. *Monteith*, 102 U. S., 145, 147.
United States v. *McBratney*, 104 U. S., 621, 623.
Fort Leavenworth R. R. Co. v. *Lowe*, 114 U. S., 525.
Utah & Northern Railway v. *Fisher*, 116 U. S., 28.

But while this is so, it is equally well settled—and the cases cited recognize the fact—that the jurisdiction of the State over lands of the United States within its limits is subordinate to the jurisdiction of the United States to protect its property and administer its institutions, and can not be so exercised as to interfere with the constitutional authority of the Federal Government.

An examination of the cases cited will show that all this court has ever held was that the State had jurisdiction of individuals or the property of individuals or corporations on lands of the United States so situated. It has held that the State could tax the property of corporations on such lands (*Fort Leavenworth R. R. Co.* v. *Lowe* and *Utah & Northern Railway* v. *Fisher*, *supra*), and that the State had jurisdiction of crimes committed by white men upon white men thereon (*United States* v. *McBratney*, *supra*). But it has never held that the State could tax the lands themselves or interfere with the control of the United States over them.

On the contrary, this court has distinctly held that the lands of the United States within a State are not subject to taxation by the State (*Van Brocklin* v. *State of Tennessee*, 117 U. S., 151, 155), and that the power vested by the Constitution in Congress, "to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States" (Art. IV, sec. 3) "*implies an exclusion of all other authority over the property which could interfere with this right or obstruct its exercise.*" (*Railroad Co.* v. *Price County*, 133 U. S., 496, 504.)

In *United States* v. *Rickert* (188 U. S., 432, 438, 439), the cases just referred to were cited in support of the judgment of the court that lands allotted to Indians in pursuance of the act of February 8, 1887, as well as the permanent improvements thereon and personal property issued to the Indians by the United States, could not be taxed by the State while the title to such allotments was held in trust by the United States.

I do not understand that the decision of the court in the Heff case in anywise impairs the judgment in the Rickert case in this respect. (See *Matter of Heff*, 197 U. S., 509.) That being so, it must be regarded as settled that Indian allotments, while the title to the same is held in trust by the Government, are in the same position, so far as respects State interference with the control of the United States over them, as other public lands of the United States.

II.

What is the situation as to other public lands of the United States within the States?

In *Gibson* v. *Chouteau* (13 Wall., 92), the court, speaking by Mr. Justice Field, said (p. 99):

> With respect to the public domain, the Constitution vests in Congress the power of disposition and of making all needful rules and regulations. *That power is subject to no limitations.* Congress has the absolute right to prescribe the times, the conditions, and the mode of transferring this property, or any part of it, and to designate the persons to whom the transfer shall be made. No State legislation can interfere with this right or embarrass its exercise.

In *Jourdan* v. *Barrett* (4 How., 168), the court said (p. 184):

> By the Constitution Congress is given "power to dispose of and make all needful rules and regulations respecting the territory or other property of the United States;" for the disposal of the public lands, therefore, in the new States, where such lands lie, Congress may provide by law; and having the constitutional power to pass the law, it is supreme; *so Congress may prohibit and punish trespassers on the public lands.*

Congress has made it an offense against the United States to cut timber on the public lands. (Revised Statutes, sec. 2461; id., sec. 5388, as amended by act of June 4, 1888.) The latter section, as amended, covers the cutting or destruction of "any timber stand-

ing upon the land of the United States which, in pursuance of law, may be reserved or purchased for military or other purposes, or upon any Indian reservation, or other lands belonging to or occupied by any tribe of Indians under the authority of the United States."

Provisions for the protection of trees, fences, etc., on lands of the United States, and for the protection of such lands from trespass by cattle, etc., and prescribing penalties for violations thereof, are contained in the act of March 3, 1875, chapter 151. (18 Stat., 481.)

In *Camfield* v. *United States* (167 U. S., 518), the police power of the United States over the public lands in the States was expressly asserted. That case involved the constitutionality of the act of Congress of February 25, 1885, chapter 149, entitled "An act to prevent unlawful occupancy of the public lands." In upholding the act, the court, speaking by Mr. Justice Brown, said (pp. 525–526):

> The General Government doubtless has a power over its own property analogous to the police power of the several States, and the extent to which it may go in the exercise of such power is measured by the exigencies of the particular case. If it be found to be necessary for the protection of the public, or of intending settlers, to forbid all inclosures of public lands, the Government may do so, though the alternate sections of private lands are thereby rendered less available for pasturage. The

> inconvenience—or even damage—to the individual proprietor does not authorize an act which is in its nature a purpresture of Government lands. While we do not undertake to say that Congress has the unlimited power to legislate against nuisances within a State, which it would have within a Territory, we do not think the admission of a Territory as a State deprives it of the power of legislating for the protection of the public lands, though it may thereby involve the exercise of what is ordinarily known as the police power, so long as such power is directed solely to its own protection. A different rule would place the public domain of the United States completely at the mercy of State legislation.

It is manifest, therefore, that even where lands or other property of the United States are within the jurisdiction of the State the rights of the Federal Government in regard thereto are very different from those of the ordinary proprietor. For a trespass upon his property the individual is relegated to a civil action, and must look to the State for police protection. But the United States is not dependent upon the State governments for such protection. This court has held it "to be an incontrovertible principle that the Government of the United States may, by means of physical force, exercised through its official agents, execute on every foot of American soil the powers and functions that belong to it." (*Ex parte Siebold*, 100 U. S., 371, 394.)

In that case the court, after stating the principle just quoted, said:

> This necessarily involves the power to command obedience to its laws, and hence the power to keep the peace to that extent. This power to enforce its laws and to execute its functions in all places does not derogate from the power of the State to execute its laws at the same time and in the same places. The one does not exclude the other, except where both can not be executed at the same time. In that case the words of the Constitution itself show which is to yield. "This Constitution and all laws which shall be made in pursuance thereof * * * shall be the supreme law of the land."

To the same effect are *In re Neagle* (135 U. S., 1); *In re Debs* (158 U. S., 564). See also *Ohio* v. *Thomas* (173 U. S., 276), in which it was held that the State could not, in the exercise of its police powers, interfere with the administration of a national soldiers' home within its limits and general jurisdiction.

It is clearly, therefore, within the competency of Congress to forbid and punish trespasses upon the lands of the United States within the limits and jurisdiction of the State.

It is equally manifest that it is for Congress to determine what shall constitute a trespass—what shall be permitted to be taken upon said lands and what shall be excluded therefrom.

There is nothing to differentiate the public lands in Nebraska from those in other States, so far as concerns the control of the Federal Government over them.

The act enabling the people of Nebraska to form a constitution and State government, approved April 19, 1864 (13 Stat., 47), provided (sec. 4):

> That said constitution shall provide, by an article forever irrevocable, without the consent of the Congress of the United States:
>
> * * * * *
>
> Third. That the people inhabiting said Territory do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within said Territory, and that the same shall be and remain at the sole and entire disposition of the United States, and that the lands belonging to citizens of the United States residing without the said State shall never be taxed higher than the land belonging to residents thereof, and that no taxes shall be imposed by said State on lands or property therein belonging to or which may hereafter be purchased by the United States.

The constitution adopted by the people of Nebraska provided, Article XI (Gen. Stat. Nebr., 1873, p. 66):

> SEC. 6. This constitution is formed, and the State of Nebraska asks to be admitted into the Union on an equal footing with the original States on the condition and faith of the terms of the propositions stated and specified in an act of Congress approved April nineteenth, 1864, authorizing the people of the Territory to form a constitution and State government, the people of the State of Nebraska hereby accepting the conditions in said act specified.

Provisions of this sort in admission acts are inserted merely out of abundant caution, to avoid disputes, as the constitutional rights of the Federal Government over its lands and other property in the States would be the same without them.

III.

If the lands upon the Winnebago Reservation, in the respects mentioned, are in the same category as other public lands of the United States, the authority of the Federal Government to prohibit and punish the introduction of liquor thereon is unquestioned. That, so long as the title thereto is held in trust by the Government they are in practically the same position as other public lands, is clear. They can not be taxed by the State during the trust period, as this court held in the Rickert case, because the tax would be in effect upon the property of the United States. Not until the legal title passes out of the United States do they cease to be the property of the United States or pass beyond its control.

The fee to the lands of the Indian tribes has always been in the Government, subject only to the Indians' right of occupancy.

> *Johnson* v. *McIntosh*, 8 Wheat., 543, 588.
> *Beecher* v. *Wetherby*, 95 U. S., 517, 525–526.
> *Spalding* v. *Chandler*, 160 U. S., 402–3.

In *Beecher* v. *Wetherby* the court said (p. 525):

> But the right which the Indians held was only that of occupancy. The fee was in the United States, subject to that right, and could

be transferred by them whenever they chose. The grantee, it is true, would take only the naked fee, and could not disturb the occupancy of the Indians; *that occupancy could only be interfered with or determined by the United States.* It is to be presumed that in this matter the United States would be governed by such considerations of justice as would control a Christian people in their treatment of an ignorant and dependent race. *Be that as it may, the propriety or justice of their action toward the Indians with respect to their lands is a question of governmental policy, and is not a matter open to discussion in a controversy between third parties, neither of whom derives title from the Indians.* The right of the United States to dispose of the fee of lands occupied by them has always been recognized by this court from the foundation of the Government. It was so ruled in *Johnson* v. *McIntosh* (8 Wheat., 543) in 1823, and in *United States* v. *Cook* (19 Wall., 591) in 1873. Other cases between those periods have affirmed the same doctrine. (*Clark* v. *Smith*, 13 Pet., 195. See also *Jackson* v. *Hudson*, 3 Johns. (N. Y.), 375; *Veeder et al.* v. *Guppy*, 3 Wis., 502, and 8 Opin. Atty. Gen., pp. 262–264.) In *United States* v. *Cook* the United States maintained replevin for timber cut and sold by Indians on land reserved to them, the court observing that the fee was in the United States, and only a right of occupancy in the Indians; that this was the title by which other Indians held their land, and that the authority of *Johnson* v. *McIntosh* on this point had never been doubted.

It is unnecessary to do more than refer to the many instances in which Congress has exercised its plenary power over the Indian lands by removing the tribes located thereon, thus destroying their right of occupancy.

The fact of the allotment of such lands under the act of February 8, 1887, and the issuance of a trust patent therefor, does not divest the United States of the fee; consequently it still has proprietary control over them. Referring to section 5 of that act, which authorized the issuance of trust patents to allottees, the court in the Rickert case said (188 U. S., 436):

> The word "patents," where it is first used in this section, was not happily chosen to express the thought which, it is clear, all parts of the section being considered, Congress intended to express. The "patents" here referred to (although that word has various meanings) were, as the statute plainly imports, nothing more than instruments or memoranda in writing, designed to show that for a period of twenty-five years the United States would hold the land allotted in trust for the sole use and benefit of the allottee, or, in case of his death, of his heirs, and subsequently, at the expiration of that period—unless the time was extended by the President—convey the fee, discharged of the trust and free of all charge or incumbrance. In other words, the United States retained the legal title, giving the Indian allottee a paper or writing, improperly called a patent, showing that at a particular time in the future, unless it was extended by the President, he would be entitled to a regular patent conveying the fee.

> This interpretation of the statute is in harmony with the explicit declaration that any conveyance of the land, or any contract touching the same, while the United States held the title in trust, should be absolutely null and void. So that the United States retained its hold on the land allotted for the period of twenty-five years after the allotment, and as much longer as the President, in his discretion, should determine.

The Winnebagos hold their allotments under trust patents issued under the act of February 8, 1887. There were a number of allotments made and patents issued under the act of February 21, 1863 (12 Stat., 658). But those patents were subsequently surrendered for new patents under the act of 1887.

In *Shiver* v. *United States* (159 U. S., 491) this court held that lands duly entered by a citizen for a homestead under the laws of the United States were not, pending proceedings in the land department, so segregated from the public domain as to be no longer lands of the United States within the meaning of section 2461, Revised Statutes, but continued to be the property of the United States for five years following the entry and until a patent was issued; and that while the entryman might cut such timber as was necessary for cultivation, building purposes, etc., if he exceeded his rights he was liable to prosecution, under sections 2461 and 2488, Revised Statutes.

In that case, after referring to certain prior decisions, the court, speaking by Mr. Justice Brown, said (p. 495):

> While these cases indicate that lands once appropriated to a certain purpose thereby cease to be available for another purpose, there is nothing in them to show that the United States loses its title to such lands by the first appropriation or that they cease to be the property of the Government. Upon the contrary, it was said by this court, as early as 1839, in *Wilcox* v. *Jackson* (13 Pet., 498, 516), that, "with the exception of a few cases, nothing but the patent passes a perfect and consummate title." So, in *Frisbie* v. *Whitney* (9 Wall., 187, 193).

The court drew a parallel between the case of any entryman and that of Indians upon a reservation, observing (p. 498):

> While this question never seems to have arisen in this court before, in *United States* v. *Cook* (19 Wall., 591)—a suit in trover for the value of timber cut from an Indian reservation—it was held that while the right of use and occupancy by the Indians was unlimited, their right to cut and sell timber, except for actual use upon the premises, was restricted to such as was cut for the purpose of clearing the land for agricultural purposes; that while they were at liberty to sell the timber so cut for the purpose of cultivation, they could not cut it for the purpose of sale alone. In other words, if the cutting of the timber was the principal and not the incident, then the cutting would be unlawful, and the timber, when cut, became the absolute property of the United

States. Their position was said to be analogous to that of a tenant for life, the Government holding the title, with the rights of a remainder-man.

The same views were reaffirmed in *Stone* v. *United States* (167 U. S., 178, 191, 194).

Allotment in severalty, so long as the title to the allotment remains in the Government, does not change the nature of the Indian's right, except that it gives him a right in severalty to the occupancy of a particular section of the lands set apart for the use of his tribe, where before he had a right in common with the other members of the tribe to the occupancy of the whole tract.

The fact that there are within the limits of the Winnebago Reservation lands which have been sold and deeded to white people, under the act of Congress of May 27, 1902 (32 Stat., 245, 275), authorizing the sale and conveyance in fee of inherited Indian lands, manifestly does not affect the power of Congress to protect the lands to which it still retains the fee.

The introduction of liquor on these allotments is not only a menace to the Indians themselves, but, as has been the experience of all communities, tends to diminish the value of such lands. But even if it were otherwise, it is, as already stated, for the Government itself to determine what shall constitute a trespass upon its property. The language of the court in *Camfield* v. *United States* (167 U. S. 513), above quoted, indicates the broad discretion which the General Government has

in this respect. The court there says that the power of the United States to protect its lands is to be "measured by the exigencies of the particular case," and may be exercised for the benefit of the public or of intending settlers, even at the cost of inconvenience or damage to individuals. The fact, therefore, that the exclusion of liquor from Indian allotments may be for the ultimate benefit of the allottees can not invalidate this exercise of the Federal police power.

The application for a writ of habeas corpus should therefore be denied.

HENRY M. HOYT,
Solicitor-General.

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Supreme Court of the United States.

No. 21, Original.—October Term, 1905.

In re James Lincoln, Petitioner. } Petition for a Writ of Habeas Corpus.

[May 14, 1906.]

The petitioner was convicted in the District Court for the District of Nebraska on an indictment charging that he did "wrongfully and unlawfully introduce into Indian country, to wit, into and upon the Winnebago Indian Reservation, a reservation set apart for the exclusive use and benefit of certain tribes of the Winnebago Indians, certain spirituous, vinous, malt and other intoxicating liquors."

Upon this conviction he was sentenced to pay a fine of $100 and the costs of prosecution and to be imprisoned in the jail of Douglas County, Nebraska, for the term of sixty days and until said fine and costs were paid. The imprisonment commenced on February 19, 1906. Without pursuing his remedy by writ of error the petitioner on April 2, 1906, filed in this court his application for a writ of habeas corpus, alleging that the United States has no police power or jurisdiction over the Winnebago Reservation, and that the law under which the indictment was drawn is unconstitutional and void in so far as it applies to the said Winnebago Reservation, and that the United States District Court was wholly without jurisdiction in the premises. The indictment was found under the act of Congress of January 30, 1897. 29 Stat. 506. April 30, 1906, the case was submitted on petition, return and a stipulation of facts.

Mr. Justice Brewer delivered the opinion of the Court.

The sixty days named as the term of imprisonment had expired before the case was submitted, and indeed had almost expired before the application was made for the writ. There is nothing to show whether the fine and costs have been collected upon execution, as the sentence authorizes. If not so collected and if they cannot be collected, then though possibly still in jail, he can shortly be discharged on taking the poor debtor's oath. Rev. Stat. sec. 1042. This section authorizes a discharge after a confinement of thirty days on account of the non-payment of fine and costs. So that within ninety days from February 19, the time the sentence took effect, the petitioner can secure his discharge either by paying the fine and costs or by taking the poor debtor's oath, as above stated.

In *Ex parte Baez*, 177 U. S. 378, which was an application for a writ of habeas corpus, it appeared that before a return to the writ could be made, or other action taken, the restraint of which the petitioner complained would terminate, and it was held that the application for the writ should be denied. Indeed the case at bar in principle is not unlike *Mills* v. *Green*, 159 U. S. 651; *New Orleans Flour Inspectors* v. *Glover*, 160 U. S. 170; *Kimball* v. *Kimball*, 174 U. S. 158, and *Jones* v. *Montague*, 194 U. S. 147, in each of which intermediate the ruling below and the time for decision here events had happened which prevented the granting of the relief sought, and the appeals or writs of error were dismissed on the ground that this court did not spend its time in deciding a moot case.

While the full jurisdiction of this court in habeas corpus may be conceded, there is in every case a question whether the exercise of such jurisdiction is appropriate. In *Ex parte Royall*, 117 U. S. 241, Royall, who was held under State process for trial on an indictment charging an offense against the laws of the State, filed his petition in habeas corpus in the Circuit Court of the United States praying release from that custody. The Circuit Court refused to order his discharge, and from its ruling he appealed, and at the same time filed an original petition in this court. (Id. 254.) The question was fully considered and it was held that while the Federal courts, Circuit and Supreme, had jurisdiction in the premises, there was a discretion whether in any case a writ should be issued, Mr. Justice Harlan speaking for the court, saying (p. 251):

"That discretion should be exercised in the light of the relations existing, under our system of government, between the judicial tribunals of the Union and of the States, and in recognition of the fact that the public good requires that those relations be not disturbed by unnecessary conflict between courts equally bound to guard and protect rights secured by the Constitution. When the petitioner is in custody by State authority for an act done or omitted to be done in pursuance of a law of the United States, or of an order, process, or decree of a court or judge thereof; or where, being a subject or citizen of a foreign state, and domiciled therein, he is in custody, under like authority, for an act done or omitted under any alleged right, title, authority, privilege, protection, or exemption claimed under the commission or order or sanction of any foreign state, or under color thereof, the validity and effect whereof depend upon the law of nations; in such and like cases of urgency, involving the authority and operations of the General Government, or the obligations of this country to, or its relations with, foreign nations, the courts of the United States have frequently interposed by writs of habeas corpus and discharged prisoners who were held in custody under State authority."

And again, after commenting on the relations of State and national courts (p. 252):

"That these salutary principles may have full operation, and in harmony with what we suppose was the intention of Congress in the enactments in question, this court holds that where a person is in custody, under process

from a State court of original jurisdiction, for an alleged offense against the laws of such State, and it is claimed that he is restrained of his liberty in violation of the Constitution of the United States, the Circuit Court has a discretion whether it will discharge him upon habeas corpus in advance of his trial in the court in which he is indicted; that discretion, however, to be subordinated to any special circumstances requiring immediate action. When the State court shall have finally acted upon the case, the Circuit Court has still a discretion whether, under all the circumstances then existing, the accused, if convicted, shall be put to his writ of error from the highest court of the State, or whether it will proceed by writ of habeas corpus, summarily to determine whether the petitioner is restrained of his liberty in violation of the Constitution of the United States."

The propositions thus laid down have been upheld by repeated decisions of this court. *Ex parte Fonda*, 117 U. S. 516; *In re Duncan*, 139 U. S. 449; *In re Wood*, 140 U. S. 278; *Cook* v. *Hart*, 146 U. S. 183; *In re Frederich, Petitioner*, 149 U. S. 70; *New York* v. *Eno*, 155 U. S. 89; *Pepke* v. *Cronan*, 155 U. S. 100; *Andrews* v. *Swartz*, 156 U. S. 272; *Whitten* v. *Tomlinson*, 160 U. S. 231; *Kohl* v. *Lehlback*, 160 U. S. 293; *Iasigi* v. *Van De Carr*, 166 U. S. 391; *In re Eckart, Petitioner*, 166 U. S. 481; *Baker* v. *Grice*, 169 U. S. 284; *Tinsley* v. *Anderson*, 171 U. S. 101–104; *Fitts* v. *McGhee*, 172 U. S. 516; *Markuson* v. *Boucher*, 175 U. S. 184; *Davis* v. *Burke*, 179 U. S. 399; *Gusman* v. *Marrero*, 180 U. S. 81; *Minnesota* v. *Brundage*, 180 U. S. 499; *Storti* v. *Massachusetts*, 183 U. S. 138.

In *In re Loney*, 134 U. S. 372; *In re Neagle*, 135 U. S. 1; *Ohio* v. *Thomas*, 173 U. S. 276, and *Boske* v. *Comingore*, 177 U. S. 459, writs of habeas corpus were sustained, but in each of these cases the act charged against the petitioner was one for which he was amenable alone to the laws of the United States, or he was exercising some authority under those laws, and so they all come within the exceptions noted in *Ex parte Royall, supra.*

While the same reasons do not apply when the petitioner is in custody by virtue of the process of a Federal court, yet a writ of habeas corpus is not to be made use of as a writ of error, (*Crossley* v. *California*, 168 U. S. 640; *Whitney, Warden, &c.*, v. *Dick, ante*, ,) the ordinary procedure for the correction of errors in criminal cases is by writ of error, and that method should be pursued unless there be special circumstances calling for a departure therefrom. *Ex parte Mirzan*, 119 U. S. 584; *In re Huntington*, 137 U. S. 63; *In re Lancaster*, 137 U. S. 393; *In re Chapman*, 156 U. S. 211; *Riggins* v. *United States*, 199 U. S. 547. Several of these cases, it is true, were applications for habeas corpus prior to final decisions in the lower courts, and the refusal of the writs was based partly, at least, upon the proposition that the orderly administration of justice would be better subserved by declining to exercise our jurisdiction until the conclusion of the proceedings below. In *Ex parte Mirzan*, however, this court declined to issue

a writ of habeas corpus after a conviction, holding that it might be issued by the proper Circuit Court, and that application should be made to that court except in cases where there were some special circumstances making immediate action by this court necessary or expedient. In the case at bar if there was any error in the proceedings of the trial court it could have been corrected by writ of error from the Court of Appeals, and no reason is given why that remedy should not have been pursued, except the request of the District Judge who decided the case. Reference is made to a decision of the Court of Appeals of the Eighth Circuit, (*In re Boyd*, 49 Fed. Rep. 48,) but that only announced the doctrine of some of the cases cited above, that ordinarily prior to final judgment a writ of habeas corpus ought not to be issued.

It is true that we issued a writ of habeas corpus in a case in some respects like the present, (*Matter of Heff*, 197 U. S. 488,) and it is relied upon by petitioner as authority for this application, but it was shown in that case that there was a direct conflict between the State and local Federal courts in the precise point of law involved, each asserting jurisdiction over the same offense; that the Court of Appeals had already decided the question adversely to the contention of petitioner, so that a writ of error from that court would have accomplished nothing; and further, that the matter involved opened up inquiry into questions of great significance affecting the respective jurisdiction of the nation and the States over large numbers of Indians. There were special reasons, therefore, for our issuing a writ of habeas corpus and investigating the matter in that case. But it does not follow from the action then taken that it is necessary or proper for this court to issue a habeas corpus in every case involving the question of the legality of a sale of liquor to Indians or the bringing of liquor into the Indian country. It is enough that the cases be disposed of in the orderly and customary mode of procedure. It may be assumed that the trial courts will follow the rulings of this court, and if there be in any case a supposed departure therefrom the proper appellate court will correct the error. To permit every petty criminal case to be brought directly to this court upon habeas corpus, on the ground of an alleged misconception or disregard of our decisions, would be a grievous misuse of our time, which should be devoted to a consideration of the more important legal and constitutional questions which are constantly arising and calling for our determination.

For these reasons the petition for a writ of habeas corpus is denied.